

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of:	)	
	)	
Petition of AT&T for Interim Declaratory Ruling	)	WC Dkt. No. 08-152
and Limited Waivers Regarding Access Charges	)	
and the ESP Exemption	)	

**COMMENTS OF AD HOC MANUFACTURER COALITION**

Our companies, which in the aggregate make a large variety of products used in providing services over circuit switched and IP networks, submit these Comments to make one important point in support of the AT&T petition. That petition asks the FCC to make clear, either by declaratory ruling or waiver, that each interexchange call must pay the same per minute charge to a LEC whose network terminates the call regardless of whether the call originates on an IP network or a circuit switched network. Because some contend that existing FCC policy is ambiguous, service providers whose interexchange calls originate on an IP network today often pay either no per minute charge or a smaller per minute charge to the LECs that terminate their interexchange calls than do service providers whose calls originate on a circuit switched network.

Included among reasons justifying grant of the AT&T petition is the fact that doing so will eliminate an ambiguity in existing policy that produces the undesired effect of artificially skewing infrastructure investment to particular technologies. The Communications Act authorizes the Commission to consider

the impact of regulatory policies on infrastructure investment.<sup>1</sup> In implementing this authority, the FCC has held that its policies should *not* distort markets by picking technology winners but instead should ensure that the marketplace is conducive to investment in whatever technologies the market prefers.<sup>2</sup> Although manufacturers focused on certain market niches - perhaps even some of our companies - arguably benefit in the *short* term from an ambiguous access charge policy that has the effect of skewing investment to certain technologies, we believe no manufacturer benefits in the *long* term by an FCC policy that distorts markets by arbitrarily favoring some technologies over others. This is why we urge the Commission to grant the AT&T petition.

Some may urge the FCC to eliminate all marketplace distortions embedded throughout the agency's existing intercarrier compensation regulations rather than eliminate the specific distortion that AT&T points to in its petition, but the Commission should not let perfection be the enemy of the good. The sorry fact is that while the Commission proposed *more than seven years ago* to broadly reform

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<sup>1</sup> See, e.g., Sec. 706(a) of Telecom Act of 1996, reproduced under the notes to 47 U.S.C. § 157 (stating that the Commission shall "encourage deployment of advanced telecommunications capacity to all Americans" using methods that "remove barriers to infrastructure development"); *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 580 (D.C. Cir. 2004) (holding that it is lawful notwithstanding the resulting injury to ILEC competitors, for the Commission not to require UNE unbundling if mandatory unbundling "would impose excessive impediments to infrastructure investment"); *Puerto Rico Telephone Authority/GTE Merger*, 14 FCC Rcd. 3122 at ¶ 58 (1999) (finding that the proposed merger at issue in that case was in the public interest in part because it was likely to result in additional infrastructure investment).

<sup>2</sup> See, e.g., Deployment of Wireline Services Offering Advanced Telecom. Capability; Pet. of Bell Atl. Corp., 13 FCC Rcd. 24011 at ¶¶ 2,3 and n. 6 (1998). See also Federal-State Joint Board on Universal Service; Pet. for Forbearance from Enforcement of Sections 54.709 and 54.711 of the Commission's Rules, 16 FCC Rcd. 4382 at ¶ 9 (2001) (the Commission's long held principle of competitive neutrality prevents the adoption of policies that "unfairly favor . . . one . . . technology over another").

all of its intercarrier compensation rules to eliminate numerous market distortions caused by the existing rules,<sup>3</sup> implementing broad reform has proven politically infeasible so far. So until broad reform becomes politically possible, the agency should implement reforms one-by-one as they are brought to the agency's attention rather than delay action on discrete reform proposals, such as the one AT&T makes in its petition, pending the completion of comprehensive reform.

### CONCLUSION

The Commission should grant AT&T's petition

Respectfully submitted,

ADC Telecommunications, Inc.  
BTECH Inc.  
CBM of America, Inc.  
FiberControl  
Independent Technologies Inc.  
MRV Communications, Inc.  
OFS Fitel, LLC  
PECO II, Inc.  
Prysmian Communications Cables  
and Systems USA, LLC  
Telesync, Inc.  
Vermeer Manufacturing Company

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<sup>3</sup> Intercarrier Compensation Reform, Notice of Proposed Rulemaking in CC Dkt. No. 01-92, 16 FCC Rcd. 9610 (2001).